

## REMARKS

Claims 1-80 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

In the Office Action of October 17, 2007, the Examiner asserts that Applicant's reply filed July 30, 2007 was not fully responsive to the prior Office Action. The Examiner's reason for asserting that Applicant's previous reply was not fully responsive appears to be that the Examiner does not agree with Applicant's reasons for traversing the restriction requirement. However, to be fully responsive to a restriction requirement, an applicant is only required to make an election. *See* M.P.E.P. 818.03(b). In the previous response, Applicant elected Invention II (claims 18-55, as defined by the Examiner). Thus, Applicant's reply was fully responsive. An Applicant is free to traverse a restriction requirement if he so chooses. *See* M.P.E.P. 818.03(b). If an applicant traverses a restriction requirement, the applicant is only required to point out the supposed errors in the examiner's action, in addition to making an election. *See* M.P.E.P. 818.03(a). Since Applicant's previous response clearly made an election and clearly pointed out the supposed errors in the Examiner's Action, the previous response was fully responsive to the Office Action of June 29, 2007. Just because the Examiner disagrees with one or more of Applicant's reasons for traversal does not make Applicant's reply not fully responsive. If the Examiner disagrees with Applicant's reasons for traversal, he should make the restriction requirement final and proceed with examination of the elected claims. *See* M.P.E.P. 821.01. Applicant may then petition from the restriction requirement pursuant to 37 CFR 1.144.

Also, the Examiner's assertions in the present Office Action are incorrect. The Examiner states: "Applicant argues that the restriction requires 'do not overlap' or 'mutually exclusive' inventions. No such requirement exists." However, as explicitly stated in the M.P.E.P., such a requirement most certainly does exist. A proper restriction requirement under M.P.E.P. 806.05(d) requires that the subcombinations **"do not overlap in scope"**. This requirement comes straight from the section of the M.P.E.P.

upon which the Examiner's restriction requirement is based. *See, also*, M.P.E.P. 806.05 and M.P.E.P. 806.05(j) **which equate the requirement of “do not overlap in scope” with “mutually exclusive.”** M.P.E.P. 806.05(d) explicitly states: “Two or more claimed subcombinations, disclosed as usable together in a single combination, and which can be shown to be separately usable, are usually restrictable **when the subcombinations do not overlap in scope** and are not obvious variants.” (emphasis added). Thus, contrary to the Examiner's assertion, there is clearly a requirement for no overlap in scope (i.e., mutually exclusive) for restriction under M.P.E.P. 806.05(d). Subcombinations are separate, non-overlapping components of a combination. In other words, subcombinations usable together in a single combination are two non-overlapping and mutually exclusive components of a larger combination. For example, a claim to a seat bracket and a claim to a gear mechanism could be two separate subcombinations usable together in a bicycle combination. The seat bracket and the gear mechanism would be two non-overlapping (i.e., mutually exclusive) parts (i.e., subcombinations) of the bicycle, where the bicycle is a “combination” of its parts (subcombinations). The Examiner has clearly misapplied the concept of “subcombinations disclosed as usable together in a single combination” to Applicant's claims per M.P.E.P. 806.05(d). For this reason, and the other reasons stated in Applicant's previous response, withdrawal of the restriction requirement is respectfully requested.

Moreover, the Examiner appears to have ignored Applicant's other reasons for traversing the restriction requirement. Applicant also argued that the Examiner did not show, by way of example, that each of the subcombinations has utility other than in the disclosed combination, as is required by M.P.E.P. 806.05(d). Applicant also argued that the Examiner did not show valid “reasons why there would be a serious burden on the examiner if restriction is not required” as is required by M.P.E.P. § 808.

For at least the reasons stated above, the restriction requirement is improper and should be withdrawn. Moreover, this response and Applicant's previous response are fully responsive to the Office Actions of June 29, 2007 and October 17, 2007. To be fully responsive to a restriction requirement, an applicant is only required to make an election.

*See* M.P.E.P. 818.03(b). Applicant elected Invention II (claims 18-55, as defined by the Examiner). Thus, Applicant's reply is fully responsive. The Examiner cannot consider the reply non-responsive just because he disagrees with one or more of Applicant's reasons for traversal. If the Examiner disagrees with Applicant's reasons for traversal, he should make the restriction requirement final and proceed with examination of the elected claims. *See* M.P.E.P. 821.01.

## **CONCLUSION**

Applicants submit the application is in condition for allowance, and notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-66300/RCK.

Respectfully submitted,

/Robert C. Kowert/  
Robert C. Kowert, Reg. #39,255  
Attorney for Applicant

Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C.  
P.O. Box 398  
Austin, TX 78767-0398  
Phone: (512) 853-8850

Date: November 19, 2007